

REMARKS

Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application, as amended, in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.116, are respectfully requested.

I. Amendments to the Claims

By the foregoing amendments to the claims, claim 1 has been amended by deleting the non-elected subject matter.

The amendments to the claims have been made without prejudice or disclaimer to any subject matter canceled or recited herein. Applicants reserve the right to file one or more continuation and/or divisional applications directed to any canceled subject matter. No new matter has been added, and entry of the foregoing amendments of the above-identified application is respectfully requested.

II. Response to Claim Objection

At page 2 of the Office Action, the claims have been objected to for encompassing a non-elected invention. In particular, the Examiner has stated that although Applicants have elected Group I, the claims have not been amended to recite that Y is an N group.

As noted above, the claims have been amended by deleting the non-elected subject matter. Accordingly, Applicants respectfully request reconsideration and withdrawal of this objection.

III. Response to Double Patenting Rejections

At pages 8-9 of the Office Action, claims 1-7, 11-16, and 19-21 have been rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1-8 of U.S. Patent No. 7,291,612 and claims 1-7 of U.S. Patent No. 7,081,456.

Applicants respectfully request deferral of these rejections until patentable subject matter is determined.

V. Response to Claim Rejections Under 35 U.S.C. § 103(a)

A. At pages 3-8 of the Office Action, claims 1-7, 11-16, and 19-21 have been rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over Matthews et al., U.S. Patent No. 7,291,612 and Matthews et al., U.S. Patent No. 7,081,456.

Applicants note that U.S. Patent Nos. 7,291,612 and 7,081,456 are available as "prior art" only under 35 U.S.C. § 102(e). To address this point, Applicants hereby state:

The instant application and U.S. Patent Nos. 7,291,612 and 7,081,456 were, at the time the invention was made, owned by or subject to an obligation of assignment to the same entity, namely Active Biotech AB.

Thus, pursuant to the provisions of 35 U.S.C. § 103(c) and MPEP § 706.02(l) *et seq.*, the 7,291,612 and 7,081,456 patents are not "prior art" and Applicants respectfully request reconsideration and withdrawal of this rejection.

B. At page 9-11 of the Office Action, claims 1-7, 11-16, and 19-21 have been rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over Bjork et al. (PCT Patent Publication No. WO 03/004495) and Bjork et al. (U.S. Patent No. 6,642,249).

Similar to the Matthews et al. patents above, PCT Patent Publication No. WO 03/004495 and U.S. Patent No. 6,642,249 are available as "prior art" only under 35 U.S.C. § 102(e). Applicants hereby state:

The instant application and the WO 03/004495 publication and U.S. Patent No. 6,642,249 were, at the time the invention was made, owned by or subject to an obligation of assignment to the same entity, namely Active Biotech AB.

Thus, pursuant to the provisions of 35 U.S.C. § 103(c) and MPEP § 706.02(l) *et seq.*, WO 03/004495 and U.S. Patent No. 6,642,249 are not "prior art" and Applicants respectfully request reconsideration and withdrawal of this rejection.

CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

In the event that there are any questions related to this response, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney at the below-listed telephone number concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: October 14, 2009

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